IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

OP.No. 8997 of 2003(U)

PETITIONER:

SANDHYA P.M., HIGH SCHOOL ASSISTANT,
VALANCHERRY HIGHER SECONDARY SCHOOL,
VALANCHERRY P.O., MALAPPURAM-676 552

BY ADV. DR.K.P.KYLASANATHA PILLAY
SRI.ARUN.B.VARGHESE
SMT.SREEDEVI KYLASANATH

RESPONDENTS:
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1. **STATE OF KERALA REP.BY THE SECRETARY,**
   GENERAL EDUCATION DEPARTMENT, GOVT.SECRETARIAT,
   THIRUVANANTHAPURAM.

2. **DIECTOR OF PUBLIC INSTRUCTIONS,**
   DIRECTORATE OF PUBLIC INSTRUCTIONS,
   THIRUVANANTHAPURAM.

3. **THE DEPUTY DIRECTOR OF EDUCATION,**
   MALAPPURAM.

4. **THE DISTRICT EDUCATIONAL OFFICER, TIRUR.**

5. **THE PRINCIPAL VELANCHERRY HIGHER**
   SECONDARY SCOOL, VALANCHERRY.

BY GOVERNMENT PLEADER SRI.V.T.K.MOHANAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 04/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.15597/2003 AND I.A.NO.9539/2006 IN O.P.NO.8997/2003 U

DISMISSED

4/07/2007 **SD/- T.R.RAMACHANDRAN NAIR, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE AUDIT OBJECTION OF THE ACCOUNTS OFFICER OF THE DEPUTY DIRECTOR OF EDUCATION, MALAPPURAM.**

EXT.P2: **COPY OF THE APPEAL DTD. 19/03/2002 SUBMITTED BY THE PETITIONER, BEFORE THE 2ND RESPONDENT.**

EXT.P3: **COPY OF THE COMMUNICATION NO.EM4/44467/02/DPI/L.DIS. DTD. 10/06/2002 ISSUED BY THE 2ND RESPONDENT TO 3RD RESPONDENT.**

EXT.P4: **COPY OF THE COMMUNICATION NO.B6.6254/02 DTD. 9/09/2002 ISSUED BY THE 4TH RESPONDENT TO THE 5TH RESPONDENT.**

EXT.P5: **COPY OF THE REPRESENTATION DTD. 20/02/2003 SUBMITTED BY THE PETITIONER.**

EXT.P6: **COPY OF THE REPRESENTATION DTD. 24/10/2005 SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT.**

/TRUE COPY/

KSS

T.R.RAMACHANDRAN NAIR, J.

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O.P.No. 8997 of 2003-U.

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Dated this the 4th day of July, 2007.

J U D G M E N T

The petitioner is aggrieved by the objections raised by the Accounts Officer of the Deputy Director of Education, Malappuram regarding payment of salary for certain periods. The audit objection relates to the period of appointment from 6-10-1997 to 2-6-1998 in a leave vacancy. The objection seems to be that the approval should have been limited till the summer vacation. Petitioner has been working as H.S.A. continuously from 6-10-1997. The initial appointment was in a leave vacancy from 6-10-1997 till 2-6-1998. This leave was extended upto 2-6-1999 and the petitioner was again appointed. Both these have been approved. The audit objection was that she was not entitled to get vacation salary during the period 6-10-1997 to 2-6-1998.

2. The petitioner submitted an appeal before the Director of Public Instructions which is evidenced by Ext.P2. By Ext.P3 the Director of Public Instructions instructed the Deputy Director of Education, Malappuram to clear the audit objection of the petitioner. Ext.P4 is a letter issued by the

District Educational Officer to the Principal of the Higher Secondary School informing about the direction of the Director of Public Instructions. At this stage the petitioner approached the Government as per Ext.P5.

3. The case of the petitioner is that the audit objection is not correct as her initial appointment is followed by a regular appointment in a permanent vacancy. The appointments in regard to the said periods have already been approved and she had received salary and increments also. Therefore, if the petitioner is directed to refund the salary drawn, that would give undue hardship to her, contends the petitioner in Ext.P5.

4. The first respondent has filed a counter-affidavit in the matter. The learned counsel for the petitioner relied upon the principles stated by this Court in the decision reported in *Jolly v. State of Kerala* (1975 KLT (SN) 108) and also in *Santha v. State of Kerala* (1992(2) KLT 549). It is contended that since the petitioner has already been appointed in a permanent vacancy, the audit objections are not correct.

5. As Ext.P5 is still pending before the Government, it is for the Government to take a decision on the merits of the matter. It is pointed out by the counsel for the petitioner that the petitioner is not being given the benefit of the increment from the year 2000 onwards. Therefore, the first respondent is directed to pass orders on Ext.P5 as expeditiously as possible, at

any rate, within a period of three months from the date of receipt of a copy of this judgment, after affording an opportunity of being heard to the petitioner. The interim orders passed by this Court will continue till orders are passed and communicated to the petitioner.

The original petition is disposed of as above.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-